

**SPEED POST**



F. No. 373/134/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 12/01/24

Order No. 15/24-Cus dated 12-01-2024 of the Government of India passed by  
Mrs. Shubhagata Kumar, Additional Secretary to the Government of India, under Section  
129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act  
1962 against the Order-in-Appeal No. TCP-CUS-000-APP-015-19 dated  
06.02.2019 passed by the Commissioner of GST, Service Tax &  
Central Excise (Appeals), Tiruchirappalli.

Applicant : Shri Kumar, Malaysia

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli.

**ORDER**

A Revision Application, bearing No. 373/134/B/2019-RA dated 30.04.2019, has been filed by Shri Kumar, Malaysia (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-015-19 dated 06.02.2019, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, vide which the Commissioner (Appeals) has allowed the re-export of gold items which were in the form of gold jewellery, confiscated vide Order-in-Original passed by the Assistant Commissioner of Customs, Tiruchirappalli, bearing No. 56/2018 dated 03.03.2018. Vide the aforementioned Order-in-Original, one gold chain and four gold bangles, all of 22 carat purity, totally weighing 154.000 gms and valued at Rs.4,17,186/- had been absolutely confiscated under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, a penalty of Rs. 42,000/- was also imposed on the Applicant, under Section 112 (a) & (b) of the Act, ibid. On an appeal filed by the Applicant, the Commissioner (Appeals) upheld the confiscation but ordered redemption of gold chain and bangles and allowed re-export on payment of fine of Rs. 50,000/-. Also, penalty imposed on the Applicant has been reduced to Rs. 20,000/-.

2. Brief facts of the case are that the Officers of Air Intelligence Unit while keeping surveillance over the persons who had arrived from Kuala Lumpur to Tiruchirappalli intercepted the Applicant who was crossing the Green Channel in a suspicious manner. On enquiry by the officers as to whether he was carrying any gold or any other valuable items, he replied in the negative. Not satisfied with his reply, the officers requested the Applicant to walk through the Door Frame Metal Detector (DFMD) after removing all metal items like watch, ring etc. and when he did so, the DFMD gave an alarm indicating presence of metal items upon his person. He was again asked if he had any metal items such as gold etc. on his person to which he again replied in the negative. The Applicant was then subjected to personal search and during the search, the officers recovered one gold chain and four gold bangles, from his pant pocket. The Govt. approved Assayer certified them to be made of gold and of 22 karat purity, weighing a total of 154.000 gms. and collectively valued at Rs.4,17,186/-. The Applicant in his statement dated 26.07.2017 recorded under Section 108 of the Customs Act, 1962, stated inter alia that he works as

an Operation Executive in Nakhoda, SDN BHD and earns around 3,500 Ringits per month; that the gold does not belong to him and was given to him by his friend whom he met at the Malaysia Airport and who requested him to carry the said gold items (whose owner and receiver are unknown) to India; that he did not submit the Indian Customs Declaration Form; that he intended to clear the gold items without payment of Customs duty; that he did not possess any licence/permit/receipt to import the gold into India; that he was aware that import of gold and attempting to clear it without declaring to the Customs for evading Customs duty is an offence; that he did not have any objection to the said gold items being seized by the government and that he accepted his offence.

3. The Applicant has filed the subject revision application, mainly on the grounds that the Applicant is a Malaysian Passport Holder and bonafide passenger/person who came to India for religious tour along with his wife and son; that the officers booked the case of non-declaration and concealment to suit their legal provisions without verifying the fact and documentary evidence available on the day of his arrival; that it is obvious that the entire family of the Applicant had travelled together which is evident from the Flight Confirmation Form; that the gold jewellery was worn by the lady passenger (his wife), the jewellery was only of 22 carat purity and the seizure was made from the Applicant by suppressing the real facts; that International passengers are not required to file any written declaration as long as they opted for green channel when they are having any dutiable goods and goods more than free allowance; that the Applicant's family who were having their own jewellery and no goods for payment of duty had rightly opted for green channel, therefore, the allegation that they have opted for green channel to evade duty is not tenable; that the Lower Appellate Authority ought not to have imposed redemption fine and penalty and ought to have allowed the Applicant to take the jewellery back to his country un-conditionally and that gold is not a prohibited item. As such, the prayer is to set aside the order of Lower Appellate Authority in imposing redemption fine and penalty as the appellant's family never violated the provisions of Section 77 of the Customs Act, 1962.

4. Personal hearings in the matter were fixed on 23.08.2023, 20.09.2023 and 06.10.2023 respectively. But, No one appeared from either side. Since, sufficient opportunities have been granted, the matter is taken up for decision based on records.

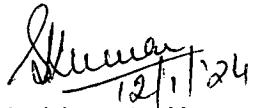
5. At the outset, the Government observes that the Applicant in his own statement dated 26.7.2017 recorded under Section 108 of the Customs Act, 1962, has accepted that he was carrying gold belonging to someone else and to be handed over to an unknown person upon arrival as well as the fact that he did this with full knowledge of the fact that bringing dutiable goods into India without declaring them to Customs and attempting to clear them by evading Customs duty is an offence. He did not possess any licence/permit/receipt to import gold into India. He has also stated that he did not have any objection to the said gold items being confiscated by the Government and that the abovesaid gold items did not belong to him and that he accepted his offence.

6. The Government has further observed that the Applicant was intercepted while he was walking out through Green Channel. The Applicant admitted to the recovery of gold items from him and also that he intended to clear the gold items without payment of Customs duty. No material has been placed on record to support the allegation that his statement was recorded under threat or coercion. Further, the entire proceedings have been covered under a Mahazar in presence of independent witnesses which also corroborates the sequence of events. He has also accepted in his voluntary statement dated 26.07.2017 recorded under Section 108 of the Customs Act, 1962 which was given before the Superintendent of Customs, AIU, Trichy, that the impugned gold items do not belong to him. This is a signed statement which has not been retracted, hence it is clear that the contentions made in the revision application are only an afterthought. It is also on record that the Applicant, upon being questioned whether he was in possession of gold/gold jewellery on his person, replied in negative. Therefore, he has not fulfilled the requirements of Section 77 of the Customs Act, 1962; rather he has made a false declaration in transaction of business under the Act, *ibid*.

7. As per Section 123 of the Customs Act, 1962, in respect of gold and manufactures thereof, the burden of proof that the goods are not smuggled is on the person from whom such goods are recovered. The Applicant did not declare the gold items as required under Section 77 of the Act, *ibid*. Further, the Applicant was intercepted while he was crossing the Green Channel. No documents evidencing licit possession of the goods have been placed on record. Therefore, the intention to smuggle is manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123 of the Act *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government holds that the lower adjudicating authority has correctly held the goods to be liable to confiscation under Section 111 of the Act *ibid* and therefore the penalty has also been correctly imposed on the Applicant under Section 112 of the Act *ibid*. The Commissioner (Appeals) has passed a considered order and recorded her reasons in para 7(iv) for allowing re-export on nominal fine and reducing penalty since the Applicant is Malaysian Passport holder, the gold items were in the form of jewellery (not in primary form) and there was no ingenious concealment.

8. In the facts and circumstances of the case, the order passed by the Commissioner (Appeals) appears to be fair and proper and merits no interference.

9. In view of the above, the revision application is rejected.

  
(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 15 /24-Cus dated 12-01-2024

Copy to:

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2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001
3. Shri B. Kumar, Consultant, M/s. B.K. Associates, "Time Tower", Room No.4, II Floor (Opp. P.T. School), 169/84, Gengu Reddy Road, Egmore, Chennai – 600 008
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED



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